

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 309

Introduced by Assembly Member Cook

February 9, 2011

An act to amend Sections 1770 and 1771 of the Government Code, relating to public officers.

LEGISLATIVE COUNSEL’S DIGEST

AB 309, as amended, Cook. Public officers: removal from office.

Under existing law, an office becomes vacant on the occurrence of certain events. Existing law specifies that when a public officer is removed, declared insane, or convicted of a felony or offense involving a violation of his or her official duty, or when his or her election or appointment is declared void, the body or person before whom the proceedings are had is required to give notice thereof to the officer empowered to fill the vacancy.

This bill would provide that an appointed or ex officio individual also ~~vacates an office~~ *office becomes vacant* where the *appointed or ex officio* individual has been debarred, suspended, disqualified, or otherwise excluded from participating in federal “covered transactions,” as prescribed under federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to require an
2 individual to vacate any appointed or ex officio office that

1 individual holds on the governing body of any local agency that
2 is, or may reasonably be expected to be, a participant or principal
3 in a federally covered transaction, when that individual is debarred,
4 suspended, disqualified, or otherwise excluded from participating
5 in a federally covered transaction, pursuant to federal law. It is not
6 the intent of the Legislature to eliminate any office, seat, or position
7 that becomes vacant pursuant to the provisions of this act.

8 SEC. 2. Section 1770 of the Government Code is amended to
9 read:

10 1770. An office becomes vacant on the happening of any of
11 the following events before the expiration of the term:

12 (a) The death of the incumbent.

13 (b) An adjudication pursuant to a quo warranto proceeding
14 declaring that the incumbent is physically or mentally incapacitated
15 due to disease, illness, or accident and that there is reasonable
16 cause to believe that the incumbent will not be able to perform the
17 duties of his or her office for the remainder of his or her term. This
18 subdivision shall not apply to offices created by the California
19 Constitution nor to federal or state legislators.

20 (c) His or her resignation.

21 (d) His or her removal from office.

22 (e) His or her ceasing to be an inhabitant of the state, or if the
23 office be local and one for which local residence is required by
24 law, of the district, county, or city for which the officer was chosen
25 or appointed, or within which the duties of his or her office are
26 required to be discharged.

27 (f) His or her absence from the state without the permission
28 required by law beyond the period allowed by law.

29 (g) His or her ceasing to discharge the duties of his or her office
30 for the period of three consecutive months, except when prevented
31 by sickness, or when absent from the state with the permission
32 required by law.

33 (h) His or her conviction of a felony or of any offense involving
34 a violation of his or her official duties. An officer shall be deemed
35 to have been convicted under this subdivision when trial court
36 judgment is entered. For purposes of this subdivision, "trial court
37 judgment" means a judgment by the trial court either sentencing
38 the officer or otherwise upholding and implementing the plea,
39 verdict, or finding.

1 (i) His or her refusal or neglect to file his or her required oath
2 or bond within the time prescribed.

3 (j) The decision of a competent tribunal declaring void his or
4 her election or appointment.

5 (k) The making of an order vacating his or her office or declaring
6 the office vacant when the officer fails to furnish an additional or
7 supplemental bond.

8 (l) His or her commitment to a hospital or sanitarium by a court
9 of competent jurisdiction as a drug addict, dipsomaniac, inebriate,
10 or stimulant addict; but in that event the office shall not be deemed
11 vacant until the order of commitment has become final.

12 (m) (1) The incumbent is listed in the Excluded Parties List
13 System and all of the following subparagraphs apply:

14 (A) The office is one that the incumbent holds ex officio, by
15 virtue of holding another office, or as an appointee.

16 (B) The *appointed or ex officio* office is on the governing board
17 of a local agency that is, or may reasonably be expected to be, a
18 participant or principal in a covered transaction, pursuant to federal
19 law.

20 (C) A federal agency head or designee has not granted the
21 incumbent an exception, in writing, permitting the incumbent to
22 participate in a particular covered transaction in which the local
23 agency is, or may reasonably be expected to be, a participant or
24 principal.

25 (2) For purposes of this subdivision, the following terms have
26 the following meanings:

27 (A) “Excluded Parties List System” means the list maintained
28 and disseminated by the federal General Services Administration
29 containing names of, and other information about, persons who
30 are debarred, suspended, disqualified, or otherwise excluded from
31 participating in a covered transaction, pursuant to federal law.

32 (B) “Local agency” includes, but is not limited to, a county,
33 whether general law or chartered, city, whether general law or
34 chartered, city and county, school district, municipal corporation,
35 district, political subdivision, or any board, commission, or agency
36 of one of these entities.

37 (C) “Federal law” includes, but is not limited to, federal
38 regulations adopted pursuant to Section 2455 of Public Law
39 103-355 (108 Stat. 3327), Executive Order No. 11738, Executive
40 Order No. 12549, and Executive Order No. 12689.

1 (3) This subdivision shall not apply to an elective office.

2 SEC. 3. Section 1771 of the Government Code is amended to
3 read:

4 1771. (a) When an officer is removed, declared insane, or
5 convicted of a felony or offense involving a violation of his or her
6 official duty, or when his or her election or appointment is declared
7 void, the body or person before whom the proceedings are had
8 shall give notice thereof to the officer or body empowered to fill
9 the vacancy.

10 (b) ~~When an officer vacates his or her office~~ *office becomes*
11 *vacant* pursuant to subdivision (m) of Section 1770, the local
12 agency on which the vacancy occurs shall give notice of that
13 vacancy to the officer or body authorized to fill the vacancy.